

## **RESOLUTION**

**WHEREAS**, Jefferson County, hereinafter referred to as County, abounds with natural resources and its economy is based around these, including, but not limited to, production agriculture, wood products and mining. Further Jefferson County's landscape and rural character has attracted more residents and visitors. The interests and values of the county residents have grown more diverse; and

**WHEREAS**, Jefferson County Commissioners, in turn, face increasingly difficult decisions regarding land use and development, conservation, and public services; and

**WHEREAS**, the federal government owns more than 50% of the lands in the County; and

**WHEREAS**, many land uses in the County depend upon roads and rights-of-way associated with general non-motorized and motorized ingress, passage, and egress; the County also depends upon the responsible use and development of public land resources and adequate, feasible, and fully-protected access is required to utilize and to protect these resources; and

**WHEREAS**, public access to routes of travel are essential to the county's transportations and public access systems and to the economic, social, and political well-being and custom and culture of the communities and citizens of the county; and

**WHEREAS**, identifying, asserting, and protecting these rights-of-way is necessary to protect the state, county and local health, search and rescue, resource management, fire protection and law enforcement personnel rely on these access routes to carry out important public functions; and

**WHEREAS**, there are numerous methods of creating public road rights-of-way including but not limited to petition, prescription, grant, statutory dedication, public road easements shown on a plat, survey, entry town site plats, by common law dedication, eminent domain, county commission resolution, partition actions, special statutes, the takeover of toll roads, stock lanes, necessity of implication, by effect of "curative statute" and R.S. 2477; and

**WHEREAS**, the United States Congress granted the right-of-way for the construction of highways over public lands, not reserved for public uses in Section 8 of the Mining Act of 1866, reenacted and recodified as Revised Statutes 2477 (R.S. 2477), 43 U.S.C. 932; and

**WHEREAS**, Jefferson County, Montana, is the owner of highway rights-of-way accepted pursuant to the grant offered under R.S. 2477; and

**WHEREAS**, the County accepted the grant offered under R.S. 2477 through public use, County construction or maintenance of the rights-of-way or other action establishing the County's intent to accept the offer contained in R.S. 2477; and

**WHEREAS**, it is the policy of the County to ensure that all rights-of-way accepted pursuant to the grant offered under R.S. 2477 be retained in perpetuity for the use and benefit of the public unless abandoned and vacated in accordance with the applicable law; and

**WHEREAS**, these rights-of-way are essential to the County's transportation and public access systems the public has relied on and continues to rely on them since prior to October 21, 1976; and

**WHEREAS**, these rights-of-way are important to the free flow of commerce in the United States; and

**WHEREAS**, the existence of a highway establishes a presumption that the highway has continued in use in its present location since the land over which it is built was public land not reserved for public use; and

**WHEREAS**, the regulatory powers of the United States are limited by the obligation to honor valid existing rights, including the rights-of-way accepted pursuant to the grant offered under R.S. 2477; and

**WHEREAS**, the County's right, title and interest in these rights-of-way includes the right to perform any and all construction and maintenance which is reasonable and necessary for safe passage for the uses established prior to the repeal of R.S. 2477 or the reservation of the lands for public use, as those uses may increase over time, based upon currently-applicable safety standards, including, at a minimum, the existing disturbed area occupied by the rights-of-way and associated improvements; and

**NOW, THEREFORE, BE IT RESOLVED**, as follows:

**DEFINITIONS:**

As used in this resolution:

1. "Acceptance," "acceptance of a right-of-way for the construction of a highway over public lands, not reserved for public uses," or "accepted" means one or more of the following acts prior to October 21, 1976,
  - a. by the County or person with the intention of creating a public highway over public lands:
    - i. construction or maintenance of a highway;
    - ii. inclusion of the right-of-way in a state, county, or municipal road system, plat, description, or map of county roads;
    - iii. expenditure of any public funds on the highway;

- iv. execution of a memorandum of understanding or other agreement with any other public or private entity or an agency of the federal government that recognizes the right or obligation of the County to construct or maintain the highway or a portion of the highway; or
  - v. use by the public for the period required by current or prior state law; or any other act consistent with state or federal law indicating acceptance of a right-of-way.
- 2. "Construction" means any physical act of readying a highway for use by the public according to the available or intended mode of transportation, including, foot, horse, vehicle or other mode. "Construction" includes:
  - a. removing vegetation;
  - b. moving obstructions, including rocks, boulders, and outcroppings;
  - c. filling low spots;
  - d. maintenance over several years;
  - e. creation of an identifiable route by use over time; and
  - f. other similar activities.
- 3. "Highway" means:
  - a. any road, street, trail, or other access or way that is open to the public to come and go at will, without regard to how or by whom the way was constructed or maintained; and
  - b. appurtenant land and structures including road drainage ditches, back and front slopes, cut and fill slopes, turnouts, rest areas, and other areas that facilitate use of the highway by the public. "Highway" includes pedestrian trails, horse paths, livestock trails, wagon roads, jeep trails, logging roads, homestead roads, mine-to-market roads, alleys, tunnels, bridges, and all other ways and their attendant access for maintenance.
  - c. "Maintenance" means any physical act of upkeep of a highway or repair of wear or damage whether from natural or other causes.
- 4. "Public lands not reserved for public uses" means any federal lands open to entry or location.
- 5. "R.S. 2477 right-of-way" or "right-of-way" means a right-of-way for a highway constructed in this County on public lands not reserved for public uses and accepted by the County prior to October 21, 1976.

Where an R.S. 2477 right-of-way has been perfected through public use, the failure by the County to conduct mechanical maintenance of said right-of-way shall not affect in any way the status of said right-of-way as a highway accepted by the public pursuant to R.S. 2477.

The omission of any right-of-way from any plat, description, or map of county roads or highways, whether required by state law or otherwise, shall not be deemed a failure to accept the grant offered under R.S. 2477.

Abandonment of any R.S. 2477 right-of-way shall take place only in accordance with the procedures in Title 7, Section 14, Part 2615 of the Montana Code Annotated.

If any R.S. 2477 right-of-way is abandoned by the County, the right-of-way shall revert to the state.

Jefferson County will undertake a detailed inventory of highway rights-of-way; and

Jefferson County will adopt an R.S. 2477 Inventory Protocol to inventory and classify established R.S. 2477 rights-of-way in the County; and

Jefferson County will communicate the R.S. 2477 assertion process to appropriate land agencies to assure knowledge of the timeframe and right-of-way assertion process; and

Jefferson County will exercise its right to assert highway rights-of-way on federal lands within Jefferson County; and

Jefferson County will work with the State to confirm and secure public access across state lands where appropriate; will work with private landowners to provide public access while respecting private property interests, will continue to collaborate with state and federal land agencies.

It is in the best interests of the County and the public that facts and legal issues relevant to the County's assertion and management of its rights-of-way accepted under R.S. 2477 be raised in a timely manner. It is a fundamental principle of due process and fairness that any person having knowledge relevant to such facts or issues bring them to the attention of the County.

Inclusion of any proposed action on the agenda for a duly called public meeting of the County Commission shall be deemed notice to the public for all purposes under this resolution.

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2007.

By \_\_\_\_\_  
Chairman  
Board of County Commissioners

Attest:  
\_\_\_\_\_  
County Clerk

By \_\_\_\_\_  
Board of County Commissioners

By \_\_\_\_\_  
Board of County Commissioners